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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,467	11/14/2003	Kevin D. Jorcak	7690-0001	2499
23980	7590	08/14/2007		EXAMINER
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C				DOUGLAS, STEVEN O
1400 PAGE MILL ROAD				
PALO ALTO, CA 94304-1124				
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			3771	
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			08/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/714,467	JORCZAK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	/Steven O. Douglas/	3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 May 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-49 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 11142003.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Species I. in the reply filed on 5/29/07 is acknowledged. This traversal is found persuasive and the requirement has been vacated.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "motor" (claim 27), the "explosion-proof container" (claim 29), the "source of AC current" (claim 30), the "battery back-up" (claim 31), the "leak detector" (claim 33), the "additional remote" (claim 34), the "gas flow sensor" (claim 36 and 37), the "monitoring station" (claim 40), the "nurse workstation" (claim 41) and the "means for monitoring" (claim 42) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It appears to Examiner that Applicant has written the specification by means of example and does not set forth an explicit mode of operation and use. Particularly, it is disclosed/claimed that the remote control unit controls the valve independently from any inhalation activity and that the system excludes any means for automatically adjusting the gas flow according to the level of physical activity of the individual. However, in paragraph [0049]-[0052] the use of the system in conjunction with a means for monitoring an individuals oxygen level or physical activity is disclosed. Furthermore the details of such for monitoring an individuals oxygen level or physical activity is merely disclosed by means of example (see paragraphs [0050]-[0051]) and the explicit details to make

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and/or use the invention is not disclosed. Also, Applicant set forth three different user interfaces (again disclosed merely by example in paragraph [0048]) that utilize a button selection feature (Fig. 3A), a digital display (Fig. 3B), and a dial interface (Fig. 3C) and has failed to set forth the explicit details to make and/or use the user interfaces in conjunction with the system schematically shown in Figure 2. Also, Applicant has set forth use of the system with voice recognition (see the disclosure set forth by example in paragraph [0045]) and has failed to set forth the explicit details to make and/or use the voice recognition system in conjunction with the system schematically shown in Figure 2. Furthermore, Applicant has set forth the valve of the system as being manually operable when an AC source is inoperative. However, the disclosure fails to disclose the explicit details to make and/or use this feature in conjunction with the system.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Maher reference pertains to another gas delivery system with associated oxygen level sensing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/  
Primary Examiner  
Art Unit 3771

SD  
8/8/07